



ARIZONA STATE SENATE
Fifty-Fifth Legislature, First Regular Session

AMENDED
FACT SHEET FOR H.B. 2649

computer data centers; tax incentives

Purpose

Redefines *tax relief*, retroactive to September 13, 2013, as the statutorily prescribed transaction privilege tax (TPT), use tax, prime contracting tax and municipal tax deductions from the gross proceeds of sale or gross income from the sale, use, installation, assembly, repair or maintenance of computer data center (CDC) equipment for use at a CDC. Modifies TPT and use tax exemptions applicable to a qualified CDC. Allows a third-party entity to invest in new renewable energy facilities on behalf of a taxpayer who is eligible for the Credit for Renewable Energy Investment and Production for Self-Consumption by International Operations Centers.

Background

In 2013, the Legislature established the CDC Program. The Arizona Commerce Authority (ACA) operates the CDC Program in conjunction with the Arizona Department of Revenue (ADOR). A CDC is a facility that is predominately used to house working servers for one or more businesses or owners. A CDC may have uninterruptible energy supply or backup generator power as well as temperature control infrastructure.

Current statute exempts the gross proceeds of sales or gross income from CDC equipment that is to be used in the CDC and that is sold to the owner, operator or qualified colocation tenant of a certified CDC from TPT and use tax (A.R.S. §§ [42-5061](#) and [42-5159](#)). To qualify for the tax relief, a qualified CDC must submit: 1) an application for CDC certification and receive a letter of certification from the ACA; and 2) a signed affirmation that the CDC will satisfy the applicable capital investment threshold. *Tax relief* is the statutorily prescribed TPT, use tax and municipal tax deductions from the gross proceeds of sale or gross income from the sale of qualified equipment that is installed in a CDC.

CDC equipment is used to outfit, operate or benefit a CDC and component parts, installations, refreshments, replacements and upgrades to the CDC equipment, regardless of whether affixed to or incorporated into real property, and whether owned, leased or used by an owner or operator pursuant to a contract ([A.R.S. § 41-1519](#)).

The tax base for the prime contracting classification of TPT is 65 percent of the gross proceeds of sales or gross income derived from the business. Statute outlines amounts that must be deducted from the gross proceeds of sales or gross income before computing the prime contracting tax base, including the gross proceeds of sales or gross income attributable to the purchase of equipment that is deductible from TPT and use tax ([A.R.S. § 42-5075](#)).

The Credit for Renewable Energy Investment and Production for Self-Consumption by International Operations Centers is offered to qualifying international operations centers (IOC) for investment in new renewable energy facilities that produce energy for self-consumption using renewable energy sources, if the power is primarily used by the IOC ([A.R.S. § 43-1164.05](#)).

The Joint Legislative Budget Committee (JLBC) fiscal note states that H.B. 2649 would result in a one-time revenue loss of up to \$10,000 in FY 2022 for tax refunds. There is uncertainty on whether CDCs currently pay the prime contracting tax. Due to a lack of industry-specific data on the cost of installing CDC equipment, the JLBC cannot determine the potential magnitude of the measure ([JLBC fiscal note](#)).

Provisions

CDC Tax Exemptions (Retroactive to taxable periods beginning September 13, 2013)

1. Redefines *tax relief*, as it relates to a CDC, as the statutorily prescribed TPT, use tax, prime contracting tax and municipal tax deductions from the gross proceeds of sale or gross income from the sale, use, installation, assembly, repair or maintenance of CDC equipment for use at a CDC.
2. Replaces the exemption from TPT for CDC equipment with a requirement that the gross proceeds of sales or gross income derived from sales of CDC equipment that is to be used in the CDC and that is sold to the owner, operator or qualified colocation tenant of a certified CDC, or to an authorized agent during the qualification period, must be deducted from the tax base for the retail classification of TPT.
3. Exempts, from use tax, the category of tangible personal property, rather than described tangible personal property, of CDC equipment that is to be used in the CDC and that is sold to the owner, operator or qualified colocation tenant of a certified CDC or to an authorized agent during the qualification period.
4. Prohibits the ACA from certifying a new CDC after December 31, 2033, rather than December 31, 2023.
5. Sets the effective date of certification for a qualified CDC as either the date of the application submittal or a prospective date stated in the application that does not exceed five years after the application submittal.

Credit for Renewable Energy Investment and Production for Self-Consumption by IOCs (Retroactive to August 25, 2020)

6. Grants a taxpayer eligibility for the credit if a third-party entity invests at least \$100 million in one or more new renewable energy facilities in Arizona on behalf of or for the direct benefit of the taxpayer.
7. Requires, to be eligible for the credit, the certification application to include investments in new renewable energy facilities made by a third-party entity on behalf of or for the direct benefit of the taxpayer.
8. Sets the minimum investment threshold at \$1.5 billion in new capital assets by the tenth anniversary of certification for taxpayers using investments made by third-party entities on behalf of or for the direct benefit of the taxpayer.
9. Prohibits a third-party entity from including the owner or operator of the IOC or the owner or operator's affiliated entities for the purposes of the minimum investment threshold.

10. Determines that power generated by a utility-owned renewable energy facility developed on behalf of or for the direct benefit of the taxpayer qualifies as self-consumption, if the utility is the same utility that provides power to the owner's IOC in Arizona.
11. Allows a statement from the utility providing power to the IOC affirming that the investment in new renewable energy facilities is made on behalf of or for the direct benefit of the taxpayer to satisfy the certification application requirement.
12. Requires the owner or operator of an IOC to annually submit to the ACA, on or before the anniversary of the original application, the following:
 - a) documentation of the progress toward the required investment, which is no longer required after the ACA receives a report stating that the required investment has been reached; and
 - b) documentation for each renewable energy facility that demonstrates that the required portion of the power generated by each facility is for self-consumption.
13. Requires, to qualify for utility relief, the owner or operator of an IOC to submit an application to the ACA that includes:
 - a) an estimate of the total investment, including investments made by a third-part entity, over a three-year period beginning on the date the application is received, in new renewable energy facilities in Arizona that produce energy for self-consumption by the IOC using renewable energy resources;
 - b) the expected location of each of the renewable energy facilities that comprise the estimated total investment and the earliest date that each facility is expected to be operational; and
 - c) a statement that a portion of the power generated by each renewable energy facility is for self-consumption and will be for IOC use.
14. Adds the following requirements for an owner or operator of an IOC to achieve after taking into account the combined investments made by the owner or operator:
 - a) an investment by the owner, operator or an affiliated entity, or a third-party entity on behalf of or for the direct benefit of the owner, operator or affiliated entity, of at least \$100 million in one or more new renewable energy facilities in Arizona that produce energy for self-consumption using renewable energy resources;
 - b) the use of a portion of the energy produced at each renewable energy facility for self-consumption in Arizona; and
 - c) the use of power for self-consumption is for an IOC in Arizona.
15. Requires an IOC owner's minimum investment to be completed within a three-year period beginning on the earlier of the date the initial application is received or December 31, 2030, and requires construction of the renewable energy facility to begin within six months of receipt of the application.
16. Requires, to become eligible for the Credit for Renewable Energy Investment and Production for Self-Consumption by IOCs, the minimum investment to be completed within a three-year period beginning on the earlier of the date the initial application is received or December 31, 2018, rather than December 31, 2030,.
17. Requires, by the fifth year of operation, at least 51 percent of the energy produced by a renewable energy facility to be used for self-consumption in Arizona.

18. Modifies the definition of *renewable energy facility* to include a facility in which a third-party entity on behalf of, and for the direct benefit of, the taxpayer, invested at least \$30 million.
19. Includes, in the definition of *renewable energy resource*, battery storage that is independent from or coupled with other sources.
20. Specifies that *self-consumption* includes the power used by related entities if the related entities are directly or indirectly under the same ownership interests that collectively own more than 80 percent.
21. Qualifies, as self-consumption, power transferred to a utility, if the utility provides power to the owner's IOC in Arizona.
22. Stipulates that information and documentation required for submittal by an IOC that were already provided to ADOR is not required to be resubmitted.

Tax Refunds

23. Requires a CDC to submit a claim for refund of TPT or use tax based on the new definition of *tax relief*, the TPT deduction and the use tax exemption to ADOR by December 31, 2021, and outlines the following refund claim guidelines:
 - a) failure to file a claim by the deadline constitutes a waiver of the claim for refund;
 - b) the maximum aggregate amount of refunds for claims filed from January 1, 2021, through December 31, 2021, is \$10,000;
 - c) if the aggregate amount of claims exceeds \$10,000, ADOR will reduce each claim proportionately so the total refund amount is \$10,000;
 - d) interest is not allowed or compounded on any refundable amount of claims paid before July 1, 2022;
 - e) if a refundable amount cannot be determined or paid until after June 30, 2022, interest accrues after that date; and
 - f) the \$10,000 aggregate refund amount does not apply to refund claims filed before January 1, 2021, or refund claims that are not in connection with the exemption.

Miscellaneous

24. Contains a technical conditional enactment.
25. Contains a statement of legislative intent and a nonseverability clause.
26. Defines terms.
27. Makes technical and conforming changes.
28. Becomes effective on the general effective date, with retroactive provisions as noted.

Amendments Adopted by Committee

1. Modifies the effective date of certification for a qualified CDC.
2. Requires the owner or operator of an IOC to annually submit to the ACA outlined information relating to the required investment and the required portion of the power generated by each facility is for self-consumption.

3. Requires the owner or operator of an IOC to include outlined information relating to the new renewable energy facilities in the required application to the ACA.
4. Adds requirements for an owner or operator of an IOC to achieve after taking into account the combined investments made by the owner or operator.
5. Requires an IOC owner's minimum investment to be completed within a three-year period beginning on the earlier of the date the initial application is received or December 31, 2030, and requires construction of the renewable energy facility to begin within six months of receipt of the application.
6. Requires, to become eligible for the Credit for Renewable Energy Investment and Production for Self-Consumption by IOCs, the minimum investment to be completed within a three-year period beginning on the earlier of the date the initial application is received or December 31, 2018, rather than December 31, 2030,.
7. Requires at least 51 percent of the energy produced by a renewable energy facility to be used for self-consumption in Arizona by the fifth year of operation.
8. Specifies that *self-consumption* includes the power used by related entities if the related entities are directly or indirectly under the same ownership interests that collectively own more than 80 percent.
9. Qualifies power transferred to a utility, if the utility provides power to the owner's IOC in Arizona as self-consumption.
10. Stipulates that information required for submittal by an IOC that was already provided to ADOR is not required to be resubmitted.
11. Defines terms.
12. Makes technical and conforming changes.

Amendments Adopted by Committee of the Whole

1. Includes investments made by a third-party entity in the information required to be included in the application to the ACA by the owner or operator of an IOC.
2. Modifies the definitions of *affiliated entity* and *renewable energy resource*.
3. Delays the retroactive date for the requirements relating to the Credit for Renewable Energy Investment and Production for Self-Consumption by IOCs to August 25, 2020, from September 13, 2013.
4. Makes technical and conforming changes.

House Action

WM	2/17/21	DPA	7-3-0-0
3 rd Read	2/24/21		41-17-2

Senate Action

FIN	3/18/21	DPA	6-1-3
-----	---------	-----	-------

Prepared by Senate Research

April 1, 2021

MG/gs